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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE DISTRICT OF NEVADA**

10 SOUTH FORK BAND COUNCIL OF
11 WESTERN SHOSHONE OF NEVADA;
12 TIMBISHA SHOSHONE TRIBE; WESTERN
13 SHOSHONE DEFENSE PROJECT; and
14 GREAT BASIN RESOURCE WATCH,

15 Plaintiffs,

16 v.

17 UNITED STATES DEPARTMENT OF THE
18 INTERIOR; UNITED STATES BUREAU OF
19 LAND MANAGEMENT; GERALD M.
20 SMITH, District Manager, Battle Mountain
21 District Office,

22 Defendants.

Case No. 3:08-cv-0616-LRH (RAM)

**JOINT STIPULATION OF
CONFIDENTIALITY AND
PROPOSED ORDER**

23 Plaintiffs South Fork Band Council of Western Shoshone of Nevada, Te-Moak Tribe of
24 Western Shoshone Indians of Nevada, Timbisha Shoshone Tribe, Western Shoshone Defense
25 Project, and Great Basin Resource Watch (“Plaintiffs”), Defendants United States Department of
26 the Interior (“DOI”), United States Bureau of Land Management, Gerald D. Smith, District
27 Manager, Battle Mountain Field Office (“Defendants”), and Defendant-Intervenor Barrick
28 Cortez, Inc. (“Defendant-Intervenor”) have agreed to the following:

29 In order to prepare their cases, the parties will need to access information in the
30 administrative record compiled by DOI regarding its decision approving an expansion to the
31 Cortez Joint Venture. Defendants assert that the documents listed in Exhibit A may contain

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1 information regarding historic or archaeological resources subject to protection from disclosure
2 pursuant to the National Historic Preservation Act, 16 U.S.C. § 470w-3, Archaeological
3 Resources Protection Act, 16 U.S.C. § 470hh(a), or 43 C.F.R. § 7.18. The parties are interested in
4 preventing harm to such resources and impediments to the use of such sites by religious
5 practitioners. This Joint Stipulation applies to documents (in whatever form) listed in Exhibit A.
6 However, the terms and conditions of this Joint Stipulation shall not apply to any of the
7 documents listed in Exhibit A which are shown to have been obtained through legitimate means
8 other than the Defendants' production of the administrative record in this case.

9 To address these concerns the parties agree to the following:

10 1. The parties shall have access to the documents contained in Exhibit A (hereinafter
11 "Protected Documents").

12 2. The parties shall not use the Protected Documents or their contents for any purpose
13 other than this litigation, including any appeals or subsequent remands. No person having access
14 to the Protected Documents solely by virtue of the Defendants' production of the administrative
15 record in this case shall make public disclosure of them or their content without further order of
16 this Court.

17 3. If a party receives a request, made pursuant to any federal or state law, from any
18 person not subject to this Joint Stipulation for access to, or copies of, any documents provided to
19 the party pursuant to this Joint Stipulation, the party shall not provide such access or copies but
20 shall refer such request to DOI for consideration under applicable federal law.

21 4. The Protected Documents may be disclosed to the Court and to the parties in this
22 litigation as attachments to briefs filed in these Court proceedings and may be utilized in
23 depositions or for other permissible discovery in this case or in any related administrative
24 proceedings. This Joint Stipulation is not intended to prohibit introduction of these Protected
25 Documents at a court hearing, trial or other proceeding in this case as allowed under the Federal
26 Rules of Evidence. When filed as attachments to briefs with the Court, the Protected Documents
27 shall be filed under seal unless otherwise ordered by the Court.

1 5. The Protected Documents may be disclosed only to the parties to this litigation, or
2 their affiliates, the attorneys of record for the parties, persons in the employ of such attorneys and
3 expert witnesses retained by the parties having a need for the information in the performance of
4 their duties. Except for the Court and its employees, and the employees of DOI, all individuals
5 having access to the Protected Documents and all individuals to whom these Protected
6 Documents or the information therein are disclosed shall be required to sign a copy of the
7 Acknowledgment of Joint Stipulation form attached hereto as Exhibit B indicating that they have
8 read and agree to abide by the terms of this Joint Stipulation. Each counsel of record will send to
9 the attorney of record for Defendants a list of all such attorneys or members of the firm so
10 designated. Signed acknowledgment forms shall be retained by counsel for Defendants and be
11 available upon request to attorneys of record and the Court.

12 6. All individuals subject to this Joint Stipulation who have access Protected
13 Documents solely as a result of the Defendants' production of the administrative record in this
14 case shall return or certify the destruction of any and all such Protected Documents, copies or
15 reproductions, in whole or in part, thereof, including but not limited to any transcriptions or hand-
16 drawn copies of any maps in their possession to counsel for Defendants within thirty days of the
17 termination of this litigation, including all applicable appeals or remands. The obligation to return
18 or destroy shall occur prior to the termination of this litigation when an individual or entity is no
19 longer a party or when an attorney or expert is no longer retained to work on this case, whichever
20 comes earlier. Individuals returning documents under any circumstance shall certify in writing
21 that the documents, copies and reproductions, in whole or in part, have been returned or have
22 been destroyed.

23 7. This Joint Stipulation does not constitute a ruling on the question of whether any
24 particular record is admissible and does not constitute any ruling on any potential objection to the
25 admissibility of any record, other than objections based on the National Historic Preservation Act,
26 16 U.S.C. § 470w-3, Archaeological Resources Protection Act, 16 U.S.C. § 470hh(a), or 43
27 C.F.R. § 7.18.

1 8. Pursuant to the Court's Order of March 12, 2009, Defendants are permitted to file
2 the administrative record on flash drive subject to objection by any party and reconsideration
3 upon objection by any party as well as by the Clerk's Office staff. The administrative record was
4 filed on June 1, 2009. The Protected Documents were included on a separate cd-rom disc
5 designated as containing confidential documents and filed under seal.

6 9. This Joint Stipulation shall survive the termination of this case and is binding for
7 all time without further order of the Court.

1 Dated: July 13, 2009,

Respectfully submitted,

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The Court hereby APPROVED this Joint Stipulation and it is SO ORDERED, this 14th
day of July, 2009.



UNITED STATES MAGISTRATE JUDGE

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

SOUTH FORK BAND COUNCIL OF WESTERN
SHOSHONE OF NEVADA; TIMBISHA SHOSHONE
TRIBE; WESTERN SHOSHONE DEFENSE
PROJECT; and GREAT BASIN RESOURCE WATCH

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF THE INTERIOR;
UNITED STATES BUREAU OF LAND
MANAGEMENT; GERALD M. SMITH, District Manager,
Battle Mountain District Office

Defendants.

CV-N-08-00616-HDM-RAM

EXHIBIT A

Defendants assert that following documents, identified by the administrative record bates-stamp number range, may contain information regarding historic or archaeological resources subject to protection from disclosure pursuant to the National Historic Preservation Act, 16 U.S.C. § 470w-3, Archaeological Resources Protection Act, 16 U.S.C. § 470hh(a), or 43 C.F.R. § 7.18: 3-39, 49-87, 88-98, 120-127, 323-382, 394-404, 1107-1152, 1451-1469, 1470-1480, 1481-1489, 1864-2724, 2756-2805, 3457-3461, 3600-3693, 4744-4794, 5610-5675, 5676-5743, 6174-6294, 6531-6913, 7177-7188, 7189-7197, 9144-9163, 9403-9597, 11040-11200, 11810-11825, 17571-17784, 18298-18317, 31548-31792, 36481-36481, 38928-39141, 42236-42403, 47292-47329, 47330-47354, 51004-51016, 55463-55736.

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LAND MANAGEMENT; GERALD M.
SMITH, District Manager, Battle Mountain
District Office,

Defendants.

Case No. CV-N-0800616-HDM-RAM

**ACKNOWLEDGMENT OF JOINT
STIPULATION**

I, _____, hereby acknowledge that I have read and understand
the Joint Stipulation entered in this action on _____, 2009. I hereby agree to be
bound by the terms of the Order. Specifically,

1. I agree that I will use the Protected Documents disclosed to me solely by virtue of
the Defendants' production of the administrative record in this case or copies of the Protected
Documents subject to the Joint Stipulation only for purposes of this litigation including any
appeals and not for any other purpose;

2. I agree that any Protected Documents disclosed to me solely by virtue of the
Defendants' production of the administrative record in this case, as well as all copies thereof,
which are in my possession will be destroyed or returned to counsel for Defendants within 30
days after the termination of my work on this case or the termination of this litigation, including
any appeals, whichever comes earlier;

3. I agree that I will disclose Protected Documents only to the Court, the parties to
this case and their attorneys of record, persons in the employ of such attorneys, and any experts or
consultants hired for this case by the parties or their attorneys and who (with the exception of the

1 Court and its employees and the employees of the Department of the Interior) have signed an
2 Acknowledgment Form like this one;

3 4. I agree that I will abide by all terms of the Joint Stipulation; and

4 5. I hereby confirm that my duties under the Joint Stipulation shall survive the
5 termination of this case and are binding upon me for all time.

6 Dated: _____

7
8
9 _____
(Signature)

10
11 _____
(Printed Name)